

Subpart 4-Bureau of Regulatory Services
Chapter 09-Weights and Measures Regulations

Packages

100.01 Application. This regulation shall apply to any commodity in package form - that is, any commodity put up or packaged in any manner in advance of sale (except in auxiliary container, not intended to be sold to the consumer intact, enclosing packages that are individually marked in conformance with the requirements of this regulation) and to any item on which there is marked a selling price based on an established price per unit of weight or measure.

100.02 Declaration of Identity. The declaration of identity shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like, unless the commodity may easily be identified through the wrapper or container.

100.03 Declaration of Quantity:

1. Net Quantity. The declaration of quantity shall disclose the net quantity of the commodity - that is, the quantity of commodity in the package exclusive of wrappers and any other material packed with such commodity.
2. Terms - Weight, Measure, Or Count. - The declaration of the quantity of a particular commodity shall be expressed in such terms of weight, measure, or count, or a combination of count and weight, measure, or size, as have been firmly established in general consumer usage and trade custom and as give accurate information as to the quantity of the commodity. But if there exists no firmly established general consumer usage and trade custom with respect to the terms used in expressing such declaration of quantity, the declaration shall be in terms of liquid measures if the commodity is liquid, or in terms of weight if the commodity is solid, semi-solid, viscous, or a mixture of solid and liquid: **Provided**, That, if the commodity is packaged in an aerosol container, the declaration shall be in terms of weight (including the propellant): **And provided further**, That, if the commodity is a textile material, the declaration shall be in terms of linear measure unless the material is one in which there exists a firmly established general consumer usage and trade custom to declare the quantity in terms of weight, in which case the declaration may be in terms of weight.
3. Units - Weight, Measure. - A declaration of quantity:
 - a. in units of weights shall be in terms of the avoirdupois pound or ounce;
 - b. in units of liquid measure shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, and fluid-ounce subdivisions of the gallon, and shall express the volume at 68° F (20° C) except in the case of a commodity that is normally sold while frozen or refrigerated, when the declaration shall express the volume at the temperature normally prevailing when such commodity is sold;
 - c. in units of linear measure shall be in terms of the yard, foot, or inch; and

- d. in units of dry measure shall be in terms of either the United States bushel of 2,150.42 cubic inches or peck, dry-quart, and dry-pint subdivisions of the bushel, or the United States standard barrel of 7,056 cubic inches or of three-quarters, one-half and one-third barrel subdivisions: **Provided**, That, in the case of drugs, in lieu of any requirement to the contrary, the declaration of quantity may be in terms of a unit of the apothecaries or metric system of weight or measure: **And provided further**, That, in the case of a commodity packed for export shipment, the declaration of quantity may be in terms of a system of weight or measure in common use in the country to which such shipment is to be exported.
4. Units with two or more meanings. - When any unit of weight or measure having two or more distinct meanings is employed in a declaration of quantity, the declaration shall identify the particular meaning of the term as it is employed in the declaration. For example, distinction shall be made between "avoirdupois" and "fluid" ounces, and between "liquid" and "dry" quarts and pints. However, such distinction may be omitted when, by association of terms (as in "1 pound 4 ounces" or "1 pint 8 ounces"), the proper meaning is obvious.
5. Prescribed Units. - A declaration of quantity shall be expressed in terms of the largest whole unit of weight or measure (for example, 1 quart shall be expressed as "1 quart" and not as "2 pints" or "32 fluid ounces"). However, when this results in a whole number and a fraction, the fraction may be expressed in its equivalent in the next smaller whole unit (for example, 1 3/4 quarts may be expressed as "1 quart 1 1/2 pints" or "1 quart 1 pint 8 ounces," but not as "1 quart 24 ounces": 1 1/4 pounds may be expressed as "1 pound 4 ounces"): **Provided**, That, if there exists, with respect to a particular commodity, a firmly established general consumer usage and trade custom to express the declaration of quantity as a fraction of a unit of weight or measure larger than the total quantity being declared or as a number of units smaller than the largest whole unit of weight or measure involved, the declaration, if informative to consumers, may be made in accordance with such usage and custom.
6. Reduction of Fractions. - Declarations of quantity may employ only binary-submultiple common fractions or decimal fractions. A common fraction shall be reduced to its lowest terms, and, except in the case of drugs, a decimal fraction shall not be carried out to more than two places: **Provided**, That, if there exists, with respect to a particular commodity, a firmly established general consumer usage and trade custom contrary to the requirement for the use of only binary submultiples of common fractions or for the reduction of a common fraction to its lowest terms, the declaration may be made in accordance with such usage and custom.
7. Supplementary Declarations.
 - a. Metric System. - A declaration of weight or measure in U. S. customary units may be supplemented by a declaration in units of the metric system.

- b. Count to be supplemented. - A declaration of quantity in terms of count shall be supplemented by a declaration of the weight, measure, or size of the individual units of the commodity, or of the total weight or measure of the commodity, unless a declaration of count alone is fully informative to the consumer.
 - c. Weight or measure to be supplemented. - A declaration of quantity in terms of weight or measure shall be supplemented by a declaration of the count or size of the individual units of the commodity, unless a declaration of weight or measures alone is fully informative to the consumer.
- 8. Character of Declaration. - A declaration of quantity shall express average net quantity: **Provided**, That a declaration may express minimum quantity when such declaration is definitely so identified by the addition some such words as "minimum quantity" or "not less than".
- 9. Qualification of Declaration Prohibited. - In no case shall a declaration of quantity be qualified by the addition of the words "when packed" or any words of similar import, nor shall any unit of weight, measure, or count be qualified by any term (such as "jumbo", "giant", "full" or the like) that tends to exaggerate the amount of commodity.
- 10. Exceptions. A package shall be excepted from the requirement of section 3 if:
 - a. it contains:
 - i. in the case of a commodity not a drug or cosmetic, less than 1/2 ounce avoirdupois, less than 1/2 fluid ounce, or less than 6 units,
 - ii. in the case of a drug, less than 6 units, or
 - iii. in the case of a cosmetic, less than 1/4 ounce avoirdupois, less than 1/8 fluid ounce, or less than 6 units; or
 - b. it is an individual packaged commodity put up in a variable weight and size for sale intact, and intended to be weighed and marked at the point of retail sale.; or
 - c. It is a multiunit package containing unlabeled individual packages which are not intended for retail sale separate from the multiunit package. In lieu of the requirements of section 3, a multiunit package may contain a declaration of quantity of contents expressing the total quantity of the multiunit package without regard for inner packaging. For such multiunit packages it shall be optional to include a statement of the number of individual packages when such a statement is not otherwise required by the regulation. **Examples:**
 Deodorant Cakes: "5 cakes, Net Wt 113 g (4 oz) each, total Net Wt 566 g (1.25 lb)" or "5 cakes, total Net Wt 566 g (1 lb 4 oz)
 Soap Packets: "10 packets, Net Wt 56.6 g (2 oz) each, total Net Wt 566 g (1.25 lb)" or "Net Wt 56 g (1 lb 4 oz)" or "10 packets, total Net Wt 566 g (1 lb 4 oz)
 (Exceptions involving declarations in terms of count shall be permitted only if the units of commodity can easily be counted without opening the package.)

(Amended August 23, 2001.)

100.04 Declaration of responsibility. Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed, shall bear on the outside of the package the name and address of the manufacturer, packer, or distributor.

100.05 Language. All information required to appear on a package shall appear thereon in the English language.

100.06 Prominence and placement. All information required to appear on a package shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. The declaration of identity, if required, and the net quantity statement shall appear on the principal display panel of the package. The name and address of the manufacturer, packer, or distributor shall appear either on the principal display panel or on any other appropriate panel. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

100.07 Information required on outside container. All information required to appear on a package shall also appear on any outside container or wrapper that is used, unless such container or wrapper is transparent and the information on the package is easily legible through such outside container or wrapper.

100.08 Variations to be allowed:

1. Variations from declared net quantity. - Variations from the declared net weight, measure, or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity comprising either a shipment or other delivery of the commodity or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage. Variations above the declared quantity shall not be unreasonably large.
2. Variations from declared minimum quantity. - Where the minimum quantity is declared, no packaging variations below the declared minimum shall be permitted, and variations above the declared minimum shall not be unreasonably large.
3. Variations resulting from exposure. - Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intra-state commerce: **Provided**, That the

phrase "introduced into intra-state commerce" as used in this paragraph shall be construed to define the time and the place at which the first sale and delivery of a package is made within the State, the delivery being made either:

- a. directly to the purchaser or to his agent, or
 - b. to a common carrier for shipment to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intra-state commerce, exposure variations shall not be permitted.
4. Magnitude of permitted variations. - The magnitude of variations permitted under subsections 1., 2. and 3., of this section shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.

Source: *Miss. Code Ann.* §75-27-19.

Paper Products

101.01 Paper napkins and paper towels. The declaration of quantity on a package of paper napkins or paper towels shall indicate the numerical count and the dimensions of the individual napkins or towels contained in the package.

101.02 Writing paper, notebook paper, envelopes. The declaration of quantity on a package of writing paper, notebook paper, or envelopes shall indicate the number of sheets or envelopes, as the case may be, in the package. When envelopes are included in a package of writing paper, the declaration shall indicate both the number of sheets of paper and the number of envelopes.

101.03 Tablets and books of writing paper. The declaration of quantity on a package of tablets or books of writing paper shall indicate the number of tablets or books in the package.

101.04 Wrapping paper. The declaration of quantity on a package of wrapping paper in sheet form may be in terms of either numerical count or of net weight. If the declaration is in terms of numerical count, it shall indicate both the dimensions of an individual sheet and the number of sheets in the package.

101.05 Facial tissues. The declaration of quantity on a package of facial tissues shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

101.06 Toilet tissues. The declaration of quantity on a package of toilet tissues in roll or sheet form shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

101.07 Supplementary Quantity Declarations. Any declaration or statement relating to the quantity of contents of a package of paper product that is in addition to or supplementary to the declaration required by law or regulation shall be in juxtaposition with and shall be subordinated to the required declaration:

Provided, That no supplementary declaration of the number of "single-ply sheets" in a package containing a "multiple-ply" product shall be permitted.

101.08 Exemption. Rolls of packages of paper products for industrial use only and not for resale need not be marked individually so long as the container in which such rolls or packages are packed is properly marked to show the quantity of the contents of such container.

101.09 This regulation is additive to valid laws and other regulations pertaining to packages and shall not be construed as superseding any such law or regulation.

Source: *Miss. Code Ann.* §75-27-19.

Roofing and Roofing Materials

102.01 Roofing and roofing materials shall be sold either by the "square" or by the "square foot". The term "square" shall mean the quantity of roofing or roofing material that, when applied according to directions or instructions of the manufacturer, will cover an area of 100 square feet exclusive of side laps or side joints: **Provided,** That, in case of roofing or roofing material of corrugated design, the side lap or side joint shall be one full corrugation.

102.02 The term "square foot" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover 1 square foot (144 square inches) exclusive of side laps or side joints.

102.03 This regulation is additive to other valid laws and regulations pertaining to packages and shall not be construed as superseding any such law or regulation.

Source: *Miss. Code Ann.* §75-27-19.

Meat, Poultry and Seafood

103.01 Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish in natural state, offered or exposed for sale, and sold, as food shall be offered or exposed for sale and sold by weight.

103.02 When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food

combination, such food product or combination shall be offered or exposed for sale and sold by weight, and a quantity representative need not be made for each of the several elements of the product or combination.

Source: *Miss. Code Ann.* §75-27-19.

Butter, Oleomargarine, and Margarine

- 104 Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of 1/4 pound, 1/2 pound, 1 pound, or multiples of 1 pound, avoirdupois weight.

Source: *Miss. Code Ann.* §75-27-19.

Flour, Corn Meal, and Hominy

- 105 When in package form and when packed, kept, offered, or exposed for sale, or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits shall be packaged only in units of 2, 5, 10, 25, 50, or 100 pounds, avoirdupois weight: **Provided,** That packages in units of less than 2 pounds or more than 100 pounds shall be permitted on authority.

Source: *Miss. Code Ann.* §75-27-19.

Berries and Small Fruits

- 106 Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 dry pint, 1 dry pint, 1 dry quart, or multiples of a quart: **Provided,** That the marking provisions of section 20 of this Act shall not apply to such containers.

Source: *Miss. Code Ann.* §75-27-19.

Rejected or Condemned Apparatus

- 107 Weights and measures that have been rejected or condemned under the authority of the director or of an inspector shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within 30 days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be

correct or until specific written permission for such use is issued by the rejecting authority.

Source: *Miss. Code Ann.* §75-27-19.

Checking Prepackaged Commodities

108 The checking procedure as recommended in the National Bureau of Standards Handbook 133, and as subsequently amended, shall be adopted for checking prepackaged commodities.

(Amended January 2001.)

Source: *Miss. Code Ann.* §75-27-19.

Bread

109 Each loaf of bread or multiple loaf of bread, made or procured for sale, kept, offered, exposed for sale or sold, whether the bread is a whole loaf, or sliced, shall be sold by avoirdupois weight.

Source: *Miss. Code Ann.* §75-27-19.

Schedule of Fees for Laboratory Testing and Adjustment

110 Mass standards are charged for testing and then an adjustment charge if needed. In the tables below the “Test Fee” is followed by the “Test w/Adjustment Fee”.

Mass Calibration		
Echelon III Weights (NIST Class F; ASTM Classes 5,6,7; OIML Classes M1, M2, M3)		
Nominal Value	Tolerance Test Fee	With Adjustment
0 - 10 lbs / 0 - 5 kg	\$5	\$10
>10 - 100 lbs / >5 - 50 kg	\$10	\$20
>100 - 1000 lbs / >50 kg - 500 kg	\$20	\$40
>1000 lbs / >500 kg	\$50	\$100
Weight Carts	\$100	\$150

Echelon II Weights (ASTM Classes 2 and 3; OIML Classes F1, F2, E2)	
Nominal Value	Fee for testing only, no adjustment charges. Fee is PER weight
0 - 10 lbs / 0 - 5 kg	\$30
>10 - 20 lbs / >5 - 10 kg	\$40
>20 lbs / >10 kg	\$50

Volume Transfer	
Nominal Value	Fee

0 - 5 Gallons	\$40
>5 Gallons	\$40 plus \$0.75/gallon for each additional gallon over five

(Amended April 6, 2010.)

Source: *Miss. Code Ann.* §75-27-19.

Vehicle Tare Weights

111 Whenever stored vehicle tare weights are employed, the following conditions and requirements shall apply:

1. Allowable differences. The difference between tare weight and stored tare weight must not exceed plus or minus three (3) scale divisions. All stored vehicle tare weights shall be determined to the nearest scale division.
2. Notification. When stored tare weights are used, weight certificates shall identify that fact by placing words such as “stored tare” next to the tare weight. Abbreviations or symbols may be used, provided the terminology is defined and clearly visible elsewhere on the printed ticket.
3. Verification. Stored vehicle tare weights shall be verified by the vehicle’s owner/user in three-month intervals. The business employing stored tare weights shall keep records of verification on each vehicle for the Department to view. If a vehicle is modified, a new tare weight shall be recorded for that vehicle before it is used again.
4. Usage. The use of stored tare weights shall be limited to vehicles moving refuse material.

(Adopted November 1, 2002.)

Source: *Miss. Code Ann.* §75-27-19.

Regulations Governing Bonded Weighmasters

112 Qualifications. Any person who performs any weight determination as a bonded weighmaster, either as an individual licensed as a bonded weighmaster or as the employee of a business which is licensed as a bonded weighmaster, shall meet all qualifications and be subject to examination, either orally or in writing or both by the Commissioner, for the purpose of determining whether such person meets required qualifications imposed by the Bonded Weighmasters Law for licensing as a bonded weighmaster or to perform the duties of such office on behalf of an employer business licensed as a bonded weighmaster.

(Adopted April 2004.)

Source: *Miss. Code Ann.* §75-27-19.

113 Impression Seal Or Electronically Inscribed. A licensed bonded weighmaster, individual or employee acting on behalf of a business licensed as a bonded weighmaster, shall affix the licensee’s impression seal and license number or

inscribe the licensees name and license number electronically upon each weight certificate produced and issued by such person. Weight certificates prepared by a licensed bonded weighmaster or an employee of a business licensed as a bonded weighmaster shall affix the date of expiration of his/her license or the business license as applicable and his/her signature as required by Section 75-27-315(2) (f) and (g).

(Adopted April 2004.)

Source: *Miss. Code Ann.* §75-27-19.

114 Licensing Provisions; Fees; Compensation of Bonded Weighmaster.

Any person, as defined by Section 75-27-303(3), or business, before engaging in business as a public weighmaster, shall obtain a license from the Commissioner.

1. The fee for such license and all subsequent renewals for an individual who is not employed by a business shall be Twenty-five Dollars(\$25.00).
2. The fee for such license and all subsequent renewals for a business is One Hundred Dollars (\$100.00) and such license shall cover all employees of that business. Business with more than one location will need to obtain a license and have a surety bond, as specified in Section 75-27-313, for each physical location. Licenses issued hereunder by the Commissioner shall expire on June 30 of each year and application for renewal thereof shall be made annually, before the expiration date.

(Adopted April 2004.)

Source: *Miss. Code Ann.* §75-27-19.

Regulation for Licensing of Scale Service Repairpersons and Scale Service-Repair Companies.

115.01 Definitions:

1. Service Repairperson. Any individual who for hire, award, commission, or any other payment of any kind installs, services, repairs, or reconditions a commercial weighing or measuring device.
2. Service Repair Company. Any agency, firm, company, or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device.
3. Commercial Weighing and Measuring Device. Any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale hire or award or in computing any basic charge or payment for services rendered on the basis of weight or measure. It shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects the accuracy of the device.

(Adopted April 6, 2010.)

115.02 License.

1. All scale service repairpersons and scale service repair companies must obtain a license annually from the Department.
2. There shall be an annual fee of \$50.00 per Licensed Service Repairperson and \$100.00 per Licensed Service Repair Company per Miss. Code Ann. Section 75-27-67. The fee shall be submitted at the time application for license is made.

(Adopted April 6, 2010.)

115.03 Minimum Equipment. Applicants for a license under this regulation must have available sufficient standards and equipment to adequately test devices as set forth in the Notes section of each applicable code in the current NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. This equipment will meet the specifications of NIST 105-series standards. This subsection shall not bar the use of additional field standards and/or equipment, as approved by the Commissioner for uniform evaluation of device performance (see subsection 115.04, Examination and Calibration or Certification of Standards and Testing).

(Adopted April 6, 2010.)

115.04 Examination and Calibration or Certification of Standards and Testing Equipment. All field standards that are used for servicing and testing weights and measures devices for which a license under this regulation is required shall be submitted to the Department for initial verification and calibration and annually thereafter. A licensed service repairperson or service repair company shall not use in servicing commercial weighing or measuring devices any field standards or testing equipment that have not been calibrated or verified by the Department. In lieu of submission of physical standards, the Commissioner may accept calibration and/or verification reports from any laboratory that is formally accredited or recognized by NIST. The Department shall maintain a list of organizations from which it will accept calibration reports. The Department shall retain the right to periodically monitor calibration results and/or to verify field standard compliance to specifications and tolerances when field standards are initially placed into service or at any intermediate point between calibrations.

(Adopted April 6, 2010.)

115.05 Service Report Form.

1. The Department shall furnish each licensee with a supply of report forms to be known as "Service Report Form." Such a form shall be executed and shall include the assigned licensee number, and shall be signed by a licensed service repairperson or by a serviceperson representing a licensed service repair company.
2. Within three days after a device is restored to service or placed in service, the original of the properly executed Service Report Form, together with any official rejection tag removed from the device, shall be forwarded to the

Department's Weights and Measures Division either by U.S. mail, P.O. Box 1609; Jackson, MS 39215-1609; electronic mail, wm@mdac.state.ms.us; or to fax number: 601-359-1175.

(Adopted April 6, 2010.)

115.06 Revocation of License.

1. The Department may revoke a license for the violation of any provision of the "Weights and Measures Law of 1964," *Miss. Code Ann.* §75-27-1, *et seq.* and/or any violation of the regulations promulgated there under.
2. The licensee shall be given written notice of the Department's intent to hold a hearing for the purpose of revocation of license. This written notice and any supporting documentation shall be sent to the licensee by any of the methods set forth in Rule 4 of the Mississippi Rules of Civil Procedure or by certified mail. The notice shall include a date, time and place of the hearing and a statement of the licensee's right to be heard. The licensee may file a written answer and supporting documentation, if necessary, with the Department.
3. The Department shall hold the hearing no later than 30 days from the date the written notice is served or received.

(Adopted April 6, 2010.)

Source: *Miss. Code Ann.* §75-27-19.

Adoption of NIST Handbook 44

116.01 The Department adopts current Handbook 44 as published by the National Institute of Standards and Technology as the specifications, tolerances and other technical requirements for weighing and measuring devices in Mississippi, except where modified, amended, or rejected herein. A copy of Handbook 44 may be obtained from the website of the National Institute of Standards and Technology, <http://www.nist.gov/pml/wmd/pubs/h44-11.cfm>.

(Adopted June 2011.)

116.02 The Department modifies HB 44, Section 2.20. "Scales, UR.2.6. Approaches" by making the following exclusion as indicated by strike through and additions, as indicated by the underlined language:

UR.2.6.1. Vehicle Scales. – On the entrance and exit end(s) of a vehicle scale, there shall be a straight approach as follows:

- (a) the width at least the width of the platform,
- (b) the length at least one-half the length of the platform but not required to be more than 12 m (40 ft), and
- (c) not less than 3 m (10 ft) of any approach adjacent to the platform shall be in the same plane as the platform. Any slope in the remaining portion of the approach shall ensure (1) ease of vehicle access, (2) ease for testing purposes, and (3) drainage away from the scale.

In addition to (a), (b), and (c), scales installed in any one location for a period of 6 months or more shall have not less than 3 m (10 feet) of any approach adjacent to the platform constructed of concrete to ensure that this portion remains smooth and level and in the same plane as the platform; however, steel grating of sufficient strength to withstand all loads equal to the concentrated load capacity of the scale may be installed in this portion. Any slope in the remaining portion of the approach referred to in (c) above shall be no more than ½ inch per foot and be constructed of concrete.

[Nonretroactive as of January 1, 1976]
(Amended 1977, 1983, 1993, 2006, and 2010)
(Adopted June 2011.)

116.03 The Department modifies pertinent sections of HB 44, Section 1.10. “General Code” by making the following additions, as indicated by the underlined language:

1. G-S.5. Indicating and Recording Elements.

A. G-S.5.1. General.—All weighing and measuring devices shall be provided with indicating and/or recording elements appropriate in design and adequate in amount. Primary indications and recorded representations shall be clear, definitive, accurate, and easily read under any conditions of normal operation of the device.

B. G-S.5.6. Recorded Representations. Insofar as they are appropriate and as determined by the Department, the requirements for indicating and recording elements shall also apply to recorded representations. All recorded values shall be printed digitally.

2. G-UR.2. Installation Requirements.

G-UR.2.2. Installation of Indicating and/or Recording Element. - A device shall be so installed that there is no obstruction between a primary indicating and/or recording element and the weighing or measuring element; otherwise there shall be convenient and permanently installed means for direct communication, oral or visual, between an individual located at a primary indicating and/or recording element and an individual located at the weighing or measuring element.

3. G-UR.3. Use Requirements.

G-UR.3.3. Position of Equipment. – A device or system equipped with a primary indicating element and used in direct sales, except for prescription scales, shall be positioned so that its indications may be accurately read and the weighing or measuring operation may be observed from some reasonable “customer” and “operator” position, as determined by the Department.

The permissible distance between the equipment and a reasonable customer and operator position shall be determined in each case upon the basis of the individuals circumstances, particularly the size and character of the indicating element.

(Adopted June 2011.)

116.04 The Department modifies HB 44, Section 1.10. “General Code” by making the following additions, as indicated by the underlined language:

G-S.5. Indicating and Recording Elements.

A. G-S.5.1. General.—All weighing and measuring devices shall be provided with indicating and/or recording elements appropriate in design and adequate in amount. Primary indications and recorded representations shall be clear, definitive, accurate; and easily read under any conditions of normal operation of the device. Scales must be connected to or equipped with an indicating element and/or recording element that is capable of making a permanent record of the weight for the customer. However, if the weight on the scale indicator or remote display is plainly visible to the customer, the operator is not required to have an indicating element and/or recording element. Any issues that may arise regarding customer readability of the scale indicator or remote display will be resolved by the Department.

(Adopted June 2011.)

Source: *Miss. Code Ann.* §75-27-19 (Rev. 2005).

Administrative Action

117.01. Definitions.

- a. “Administrative Complaint” means a written document issued to a person or business that contains allegation(s) of violation(s) of the “Weights and Measures Law of 1964” and/or the “Weights and Measures Regulations” by the person or business named therein and the notice of penalty(ies) for said violation(s).
- b. “Administrative hearing” means an appeal by the respondent in an administrative complaint to the Department for an evidentiary hearing on the allegations contained in said complaint.
- c. “Commissioner” means the Commissioner of Agriculture and Commerce.
- d. “Respondent” means the person or business who receives an administrative complaint alleging violation(s) of the law and the notice of penalty(ies) for that violation(s).

117.02. Conduct of the Administrative Hearing.

- a. Any person who receives an administrative complaint may request an administrative hearing within 30 days from the date of receipt of the

notice, except for a stop-sale order which must be appealed within 20 days of issuance per law. The Commissioner or his/her designee shall conduct a hearing after giving written notice of the date, time and place of such hearing to the respondent not less than fourteen (14) days prior to the commencing of the hearing. Failure to request a hearing within the allotted time period shall constitute a waiver of the right to a hearing.

- b. The Commissioner may conduct the hearing or he/she may designate a Hearing Officer.
- c. The respondent may represent himself/herself in person or be represented by a duly authorized representative.
- d. The Department shall cause the hearing to be recorded by a court reporter. Any party may, at its own expense, request the court reporter to prepare a transcript of the hearing.
- e. Formal rules of evidence and procedure will not apply to these proceedings but the Hearing Officer may use them as a guide in the proceedings.
- f. The Department will present its case first and then the respondent may present its case. The Department will be allowed to present rebuttal evidence.
- g. At the conclusion of the hearing, the Hearing Officer shall prepare a written final opinion incorporating his/her findings of facts and conclusions of law. This decision will be the final order of the Department.
- h. The decision of the Department may be appealed to the Circuit Court of the First Judicial District of Hinds County. The appealing party shall be responsible for the costs of preparing the record on appeal, including the transcript.

117.03. Penalties.

- a. Authority. The Department's authority to assess administrative penalties for the enforcement of the Weights and Measures Law and regulations adopted in support of that Law is found in **MISS. CODE ANN. §75-27-59** (Supp. 2013).
- b. In general. The penalty matrix below will be followed for the violations listed in most cases. However, the Department will exercise some discretion up to the penalty amounts set out in the law where there are aggregating factors including but not limited to where the violator has

repeatedly violated the law in a 12-month period, or if the violator is shown to have willfully and intentionally violated the law or regulations.

c. Penalty Matrix.

Law¹	Violation	First Violation-Penalty	Subsequent Violations²-Penalty
HB 44, Sections: §1.10, G-UR 4.1 §1.10, G-UR 4.2 §1.10, G-UR 4.3 §1.10, G-UR.4	Failure to maintain device in proper working order (maintenance of equipment).	Stop-Use Order	2 nd violation-\$500; 3 rd violation- \$1,000.
Miss. Code Ann. §75-27-31 §75-27-59(1)(b)	Use or have in possession for the purpose of use a weight or measure without a seal affixed to the weight or measure by the Department.	Stop-Use Order	2 nd violation-\$500; 3 rd violation-\$1,000.
Miss. Code Ann. §75-27-31 §75-27-59(1)(d)	Unauthorized removal of a Department red-tag or use of a red-tagged device.	\$500.00	2 nd violation-\$1,000 3 rd violation-\$2,000.
Miss. Code Ann. §75-27-27 §75-27-59(1)€	Sell, or offer or expose for sale, less than the quantity he represents.	Stop sale and/or \$500.00.	2 nd violation-\$1,000; 3 rd violation-\$2,000.
Miss. Code Ann. §75-27-59(1)(f)	Take more than the quantity he represents of any commodity, thing, or service, when, as buyer he furnishes the weight or measure by means of which the amount is determined.	\$500.00 for each commodity, thing, or service has been falsely represented.	2 nd violation-\$1,000; 3 rd violation-\$2,000.
Miss. Code Ann. §75-27-29 §75-27-59(1)(j)	Violation of a stop-sale, stop-use order, stop-removal or removal order.	\$1,000.00	2 nd violation-\$2,000; 3 rd violation-\$3,000.
Miss. Code Ann. §75-27-59(1)(h); HB 44, §1.10, G-UR.3.3; WM §116.03; WM §116.04	Failure to position device properly.	Stop-use order.	\$500.00.
Miss. Code Ann. §75-27-59(1)(b) HB 44, §1.10, G-UR.1.1	Use of an unsuitable device.	Stop-use order and/or \$500.00 for each unsuitable device.	2 nd violation-\$1,000 per device; 3 rd violation-\$2,000 per device.
HB 44, §2.20,UR.3.3; Miss. Code Ann. §75-27-59(1)(j)	Failure to follow HB 44, UR 3.3, “Single Draft Vehicle Weighing.”	Stop-use order and/or \$500 for each instance unless weighed in	2 nd violation-\$1,000; 3 rd violation-\$2,000.

¹ “Law” means the source of the weights and measures violation. It references the statute, Weights and Measures (“WM”) regulation or the section of Handbook 44 (“HB44”) where the violation is prescribed.

² A second violation is one that occurs within 12 months of a previous violation. A third violation occurs within 18 months of the first violation.

		accordance with HB 44.	
WM §115.04 Miss. Code Ann. §75-27-59(1)(j)	Use of field standards by a service repairperson that have not been verified by the Department or another state laboratory recognized by NIST.	Stop-use order and/or \$500.00 for each unverified field standard.	2 nd violation-\$1,000 for each unverified field standard; 3 rd violation-\$2,000 for each unverified field standard.
WM §115.05 Miss. Code Ann. §75-27-67 §75-27-59(1)(j)	Failure by service company to submit service reports to the Department within three days of restoring the device to service or placing the device in service.	\$500.00 for each device restored to service or placed in service without timely submitting a service report to the Department.	2 nd violation-\$1,000 per device; 3 rd violation \$2,000.00 per device.
Miss. Code Ann. §75-27-19	Failure to obtain an installation permit for installing scales with a weighing capacity of 10,000 pounds or more.	\$1,000.00	2 nd violation-\$2,000; 3 rd violation- \$3,000.
Miss. Code Ann. §75-27-19	Failure to obtain a scale repairman license prior to repairing or testing a weighing device in MS.	\$1,000.00	2 nd violation-\$2,000 3 rd violation-\$3,000
Miss. Code Ann. §75-27-59(1)(i)	Buy or sell pulpwood by any means other than prescribed in 75-27-39.	\$500.00	2 nd violation-\$1,000; 3 rd violation-\$2,000
Miss. Code Ann. §75-27(1)(j)	Violate any WM law or regulation for which a penalty has not been provided herein.	\$500.00	2 nd violation-\$1,000; 3 rd violation-\$2,000.
Miss. Code Ann. §75-27-51	Misrepresentation of price; Bar code scanner system with a failure rate of greater than 2%.	Stop use order and/or \$100	2 nd and subsequent violations-\$500.

(Adopted August 4, 2016.)

Source: *Miss. Code Ann.* §75-27-19.